IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15437 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAURASHTRA CHEMICALS LIMITED & 1 - Petitioner(s)

Versus

INDUSTRIES COMMISSIONER & 2 - Respondent(s)

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Appearance :
NMR KEYUR GANDHI, for NANAVATI ASSOCIATES for Petitioner(s) : 1 - 2.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 3.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 24/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Rule. Mr. Siraj Gori, learned AGP waives service of Rule on behalf of the respondents. With the consent of the parties, the matter is finally disposed of.

2. Learned counsel for appellants submits that while submitting the scheme for modernization of the plant, they had submitted estimated costs and plans and had claimed certain sales tax exemptions, but despite issuing provisional eligibility certificate, the State Government and its authorities are not issuing any final eligibility certificate. It is also submitted that the amount spent in erecting the captive power plant is required to be included in the final eligibility certificate, but the respondents are not taking the said expenses into consideration and even without passing any final order into the eligibility of the petitioner, are proposing recovery against the interest of the petitioner.

3. Learned counsel for the respondents submits that the petition is misconceived and the recovery proposed by the State is justified.

4. It is to be seen from the order dated 13.10.2003 that the very same question came up for consideration before one of us and in view of the non-consideration of the petitioner for issuing final eligibility certificate, Rule was issued to the other side, that is, the present respondents. Almost two years have passed, but the State has not passed any further orders in the matter though stay against passing final order in issuing final eligibility certificate was never granted against the State.

5. Taking into consideration the rival contentions, we are of the opinion that the petition must be disposed of with the following directions:-

[a] Within a period of three months from today, the respondents/competent authority shall dispose of the matter, finally after giving appropriate notice and opportunity of

hearing to the petitioners.

[b] We make it clear that we are not entering upon the merits of the matter and it would be open to the respondents to consider the case on merits and include or not include the amount spent for erecting captive power plant. The order to be passed by the State/competent authority shall be a speaking order considering every argument made/raised by the petitioners.

[c] Till the matter is finally disposed of by the respondents/competent authority, no coercive action shall be taken against the petitioners.

6. The petition is disposed of. Rule is made absolute to the aforesaid extent. No orders as to costs.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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